

REMARKS

The claims are 1 and 5-16. Claims 18-22 have been cancelled without prejudice or disclaimer. Reconsideration of the present claims is respectfully requested.

Applicants having filed a request for continued examination (RCE) hereby set forth the following remarks in response to the Office Action dated April 9, 2004.

Claims 1, 5-7, 9, 12-15 stand rejected under 35 U.S.C. §103 as allegedly obvious over U.S. Patent No. 2,837,042 (Laval) in view of JP 61035748 (Nishi) and U.S. Patent No. 5,996,768 (Boyce). Claims 8, 10 and 11 were rejected as allegedly obvious over the same art further in view of EP0915014A (Ackley). Claim 16 stands rejected as allegedly obvious over Laval in view of Nishi and Boyce and further in view of JP63196229 (Morishita). Lastly, claims 18-22 were rejected as allegedly obvious over Ackley in view of Boyce.

The rejection of claims 18-22 is now moot in view of the cancellation of those claims to simplify the issues. Those claims have been cancelled without prejudice to pursuing the subject matter claimed therein in a later filed application. With respect to claims 1 and 5-16, Applicants respectfully traverse the Examiner's rejections.

Prior to discussing the merits of the rejection, Applicants believe it would be helpful to discuss the advantages of the present invention. The method of the present invention provides a highly advantageous means to decorate chocolate tablets with pellet shaped candy pieces, such as M&Ms® Chocolate Candies, in a precise and predetermined arrangement that is defined by the arrangement of the pocket placement of the carrier bars on a conveyor. The candy pieces are arranged in recesses in the chocolate tablet to form a

design or pattern. Advantageously, the carrier bars can be readily changed on the conveyor to alter the design or pattern when so desired.

Laval is directed to a device for placing small candy pellets on a soft, pliable work material, such as dough. Clearly this is not a chocolate tablet. The Examiner refers to col. 5, lines 6-27, 64-70, col. 6, lines 34-70, for the proposition that firm substrates are taught. Applicants respectfully find this proposition questionable. After reviewing Laval at col. 5, line 6 to col. 7, line 4, Applicants have found no explicit reference to the cereal being firm. Moreover, it is noted that the hole created in the cereal granules by the pricking device is not a recess for holding the pellets therein, but instead is a perforation into which a bonding agent is placed. There is simply no disclosure of placing a candy piece into a recess and the precision required therefore since the pellets in this embodiment of Laval sit proud on the cereal, the hole only being present to hold a bonding agent. In fact, the disclosure at col. 6, lines 67-71, reads:

The pellets are adapted to strike the granules in the areas thereof coated with bonding agent 136 so as to adhere thereto. Obviously, by controlling the air pressure, the pellets may be made to strike the granules with considerable force.

Based on this disclosure, it is respectfully submitted that one of ordinary skill in the art would not interpret Laval as suggesting that the cereal was necessarily firm or that pellet shaped candies could be precisely arranged in the recesses of a chocolate tablet to form a predetermined pattern. In fact, the forceful ejection of the pelleted material of Laval is contrary to the use of a firm substrate and teaches away from the use of a chocolate tablet.

In that regard, referring to Laval's second embodiment which describes the placement of candy on a soft dough cookie, it is noted that the apparatus includes an oven for cooking the dough. Clearly, the use of an oven with a chocolate tablet would simply not work, i.e., the chocolate tablet would melt. Moreover, there is no need for precise placement of the candy piece into a recess as required in the present invention because Laval simply describes placement of a candy into a soft dough. Accordingly, it is respectfully submitted that one of ordinary skill in the art at the time of the invention would not have found that Laval suggested the presently claimed method of decorating a chocolate tablet with pellet shaped candies in the recesses of the chocolate tablet using carrier bars with pockets arranged to correspond to the predetermined design pattern.

It is respectfully submitted that none of Boyce, Nishi, Ackley or Morishita remedy the deficiencies of Laval, whether taken alone or together. The Examiner relies on Boyce for showing a carrier bar that can be changed to different sized pellets and orientation. However, Boyce makes no disclosure or even suggestion of using carrier bars having various pocket placement to effect the arrangement of pellet shaped candies on a chocolate tablet. Boyce is simply directed to a quick change drum so that pellets of various sizes or shapes can be properly printed on and makes no suggestion of using different carrier bars to provide a predetermined arrangement of candies in the corresponding recesses of a chocolate tablet.

Nishi is also deficient. Nishi discloses gluing a piece of chocolate to a base piece of chocolate with molten chocolate. The Examiner attempts to turn this disclosure into a suggestion that chocolate tablets would obviously have recesses into which pellet shaped candies are placed. It is not seen how, without hindsight, that the Examiner can


reach this conclusion. In any event, the present invention is much more than this. It is a highly advantageous technique using a conveyor system with carrier bars having the appropriate placed pockets for producing a decorated chocolate tablet with a predetermined pattern of pellet shaped candies.

The Examiner relies on Ackley for teaching a ramp conveyor and Morishita for teaching printing on pellets. Clearly neither of these references overcome the deficiencies of Laval, Boyce and Nishi. In that regard, the Examiner should note that the method of this invention when coupled with a printing step, such as found in claim 16, provides a unique technique for delivering a printed pellet shaped candy piece in a defined arrangement in on a chocolate tablet with uniform display of the image printed on the candy piece. For example, if the method were used to print the "m" on M&M's® chocolate candies, one could ensure that when the printed candy pieces were placed in the chocolate tablet that the "m" was displayed or "up" using the method of this invention. It is respectfully submitted that the art of record does not disclose or suggest this claimed embodiment, let alone the advantage associated therewith.

Wherefore, it is respectfully submitted that the cited art, whether taken alone or together, does not disclose or suggest the presently claimed invention. Accordingly, it is respectfully requested that the amendment be entered, claims be allowed and the case be passed to issue.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address given below.

Respectfully submitted,


Attorney for Applicants
Raymond R. Mandra
Registration No. 34,382

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200

NY_MAIN 456364v1